

**BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: November 16, 2005

Division: County Attorney

Bulk Item: Yes ☐ No ☒

Staff Contact Person: Pedro Mercado

AGENDA ITEM WORDING:

Discussion to establish procedure RE: CNA recommendations of the Special Master.

ITEM BACKGROUND:

During April and May of this year a series of hearings were held in which Special Master Tom Wright heard petitions filed by homeowners asking that their properties be excluded from the Conservation and Natural Areas designations pursuant to ordinance 018-2004. The Special Master heard 34 petitions involving 40 properties and has made recommendations to the BOCC as to whether the petitions asking to be excluded from the CNA should be granted or denied. Under the ordinance the BOCC is tasked with considering the Special Master's recommendations at a public hearing. The ordinance does not set out the procedures or standard of review to be followed by the BOCC. The breakdown of the petitions/properties are as follows; lower keys – 12 petitions involving 14 properties, middle keys – 10 petitions involving 13 properties, upper keys – 12 petitions involving 13 properties.

Before staff can schedule the hearings before the BOCC, several procedural issues need to be resolved.

1) Given the geography of the Keys, the location and the total number of petitioners, where would the board prefer to hold the hearing – Lower, Middle or Upper keys? 2) Would the Board prefer to have the hearings on the same day of the scheduled BOCC meetings, the second reserved day or some other date entirely? 3) Will the BOCC take evidence and/or hear testimony regarding each petition? 4) The County Attorney's office presented the evidence before the Special Master and it would be a conflict of interest to represent the BOCC at the hearings therefore the BOCC will have to have separate counsel.

PREVIOUS RELEVANT BOCC ACTION:

The BOCC passed ordinance 018-2004 during the June 2004 BOCC meeting and subsequently extended it for an additional 6 months at the June 2005 BOCC meeting.

CONTRACT/AGREEMENT CHANGES:

STAFF RECOMMENDATIONS:

- 1) As a compromise, schedule a hearing in the Middle Keys.
- 2) Hold the hearings on December 22, the second reserved day. (The room is available and given the number of applicants and the fact that the original hearings took 4 full days the most prudent course of action would be to set aside a full day for the hearings.)
- 3) Ordinance 018-2004 requires that the Board of County Commissioners consider the Special Master's recommendations at a public hearing but is moot as to any other procedure.

The Special Master was tasked with simply making a recommendation. The board is then to consider (or take into account) that recommendation at a public hearing. The nature of public hearings is to allow input from the public therefore it would seem appropriate that the board will consider additional input.

- 4) Hire outside counsel to represent the board at the hearing.
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TOTAL COST: _____

BUDGETED: Yes ____ No ____

COST TO COUNTY: _____

SOURCE OF FUNDS: _____

REVENUE PRODUCING: Yes ____ No ____

AMOUNT PER MONTH ____ Year ____

APPROVED BY: County Atty ____ OMB/Purchasing ____ Risk Management ____

DIVISION DIRECTOR APPROVAL:

John R. Collins 12/12/05

JOHN R. COLLINS, COUNTY ATTORNEY

DOCUMENTATION: Included ____

Not Required X

DISPOSITION: _____

AGENDA ITEM # _____